

**Juniper Ridge Landfill  
Department Order #S-020700-WD-W-M**

**Petition to Modify and Request for Public Hearing  
(dated May 27, 2011)  
jointly filed by Municipal Review Committee, Inc.  
and  
Penobscot Energy Recovery Company, LP**

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May 27, 2011

VIA EMAIL AND FIRST CLASS MAIL

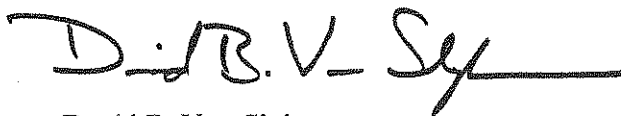
Susan Lessard, Chair  
Board of Environmental Protection  
17 State House Station  
Augusta, Maine 04333-0017

Re: Petition to Modify - Juniper Ridge Landfill Amended License  
#S-020700-WD-W-M.

Dear Chair Lessard:

Please find enclosed "PERC/MRC's Petition to Modify Portions of Solid Waste License #S-020700-WD-W-M issued to the State Planning Office regarding Juniper Ridge Landfill."

Very truly yours,



David B. Van Slyke  
Jeffrey D. Talbert

DBV/jac  
Enclosure

cc: Darryl Brown, SPO  
James Brooks, Acting DEP Commissioner  
Paula Clark, DEP  
Greg Louder, MRC  
Peter Prata, PERC  
Thomas R. Doyle, Esq.

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STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION

STATE PLANNING OFFICE SOLID WASTE )  
LICENSE #S-020700-WD-W-M )  
)  
)

**PERC/MRC Petition To Modify Portions Of Solid Waste License #S-020700-WD-W-M  
Issued To The State Planning Office Regarding Juniper Ridge Landfill**

The Penobscot Energy Recovery Company, LP ("PERC") and the Municipal Review Committee, Inc. ("MRC") hereby petition the Board of Environmental Protection (the "BEP" or "Board") pursuant to 06-096 CMR 2 § 27 to modify portions of Solid Waste license #S-020700-WD-W-M as amended on April 9, 2004 ("License Amendments") and revised on September 10, 2010 ("License Modifications" or "Minor Revision")(collectively the "License").

In particular, PERC and MRC request modification of the License pursuant to 06-096 CMR 2 § 27 based upon the following criteria:

- (1) The licensee has violated any condition of the license (06-096 CMR 2 § 27(A)); and/or
- (2) The licensee obtained the license by misrepresenting or failing to disclose fully all relevant facts (06-096 CMR 2 § 27(B)); and/or
- (3) The licensed activity poses a threat to human health or the environment; (06-096 CMR 2 § 27(C)); and/or
- (4) There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license. (06-096 CMR 2 § 27(D)).

PERC and MRC have attached proposed modifications of the Minor Revision that contain the specific modifications requested. (Proposed Modifications of the License Minor Revision is Attached as Exhibit 1).

PERC and MRC also request that the Board hold a hearing on this petition, as there is

credible conflicting evidence regarding this matter and the Board would benefit from such a hearing.

### **Factual Basis for the Petition**

On October 21, 2003, the Department issued conditional approval for the transfer of licenses for the West Old Town Landfill, now known as the Juniper Ridge Landfill ("JRL" or the "Landfill") from Fort James Georgia Pacific to the State Planning Office ("SPO"). The transfer became effective on February 5, 2004 when the landfill was sold to SPO. On February 5, 2004, SPO also entered into an Operating Services Agreement with NEWSME Landfill Operations, LLC ("NEWSME"), a subsidiary of Casella Waste Systems, Inc. ("Casella") to operate the landfill. NEWSME currently manages all operations at the Landfill.

PERC and MRC have information, explained below, regarding NEWSME's management of the Landfill and SPO's oversight of such management that satisfies the criteria set out in Section 27 of the Department's Chapter 2 Rules that warrant modifying several provisions of the License.

#### **I. The Licensee Has Violated Conditions of the License (Chapter 2 § 27(A)).**

##### **A. License Conditions**

Pursuant to Condition 16(A) of the License Amendments (entire License Amendments attached hereto as Exhibit 2), Licensee:

shall not dispose of unprocessed MSW from any source other than bypass from the following sources: PERC incinerator in Orrington and the Maine Energy incinerator in Biddeford; waste delivered under an interruptible contract with PERC; or waste delivered in excess of processing capacity at other MSW incinerators in Maine.

Condition 16(B) of the License Amendment requires that licensee:

shall not accept waste from an incinerator without verifiable authorization from either the owner/operator of an incinerator or from a regulatory entity with jurisdiction over the incinerator that a bypass has been called or, for holders of interruptible contracts, the contracts have been interrupted in accordance with the contractual provisions.

Further, Condition 16(D) of the License Amendment requires that licensee:

shall notify the Department if waste deliveries in excess of processing capacity at MSW incinerators continue from a particular incinerator for a period exceeding 1 week, and provide such information as the Department may request demonstrate that the deliveries are due to either planned outages or unplanned production problems.

**B. Violation of the License Conditions**

SPO has violated Condition 16(A) of the License Amendment by: (1) allowing the disposal of unprocessed MSW at JRL that is not bypass in violation of Condition 16(A) of the License Amendment; and (2) allowing the disposal of unprocessed MSW from a source other than (a) the PERC incinerator in Orrington; (b) the Maine Energy incinerator in Biddeford; (c) waste delivered under an interruptible contract with PERC; or (d) waste delivered in excess of processing capacity at other MSW incinerators in Maine.

SPO has violated Condition 16(B) of the License by accepting waste from an incinerator without appropriate verifiable authorization. Further, SPO has violated Condition 16D of the License Amendment by failing to notify the Department that waste deliveries in excess of processing capacity at MSW incinerators were received from a particular incinerator for a continuous period exceeding 1 week.

**C. Evidence That Licensee Has Violated Conditions of the License**

On behalf of PERC and MRC, Michael Mains, who has over 20 years of experience in solid waste management and is the founder of Eden Environmental, Inc., examined relevant data regarding shipments of MSW to JRL in various recent time periods to determine whether the current License conditions regarding shipments of MSW were being met. *See Affidavit of Michael Mains Attached as Exhibit 3.* In particular, Mr. Mains reviewed: (1) Monthly Activity Reports submitted to the SPO and DEP by NEWSME, the operator of JRL, for the period January 1, 2007 through December 31, 2010; (2) Annual reports submitted to SPO by the four

Maine waste-to-energy incinerators ("WTE Incinerators"): Maine Energy, PERC, ecomaine and Mid-Maine Waste Action Corporation ("MMWAC") between 2007-2009; and (3) the Annual Report and MSW bypass letters submitted to DEP by Pine Tree landfill (PTL) for 2007.

The results from Mr. Main's research make clear that from January 1, 2007 until December 31, 2010 MSW associated with Maine Energy was sent to JRL on such a continuous basis that it could not have been solely "bypass" as required by Condition 16(A) of the License Amendments. For example, on-going MSW deliveries to JRL, which lasted four or more days in a week,<sup>1</sup> occurred from the Casella transfer stations associated with Maine Energy for a period of: (a) 25 weeks in 2008; (b) 25 weeks in 2009; and (c) 41 weeks in 2010.<sup>2</sup> Attachment D to Mr. Main's Affidavit visually illustrates how these delivery periods lasted anywhere between 4-6 days per week, week after week.

Furthermore, contrary to License Amendment requirements 16(A) and (B), there has been significant amounts of MSW sent to JRL from Casella-owned transfer stations that were not verified as by-pass by one of the WTE Incinerators. In fact, Mr. Main's research and analysis demonstrates that only 15% of the MSW bypass delivered to JRL over the past two years has been verified by WTE Incinerators, and that the remaining balance of MSW delivered to JRL is "unallocated" --or in other words, has not been identified (verified) as MSW bypass from an incinerator by any WTE Incinerator. See Affidavit of Mr. Mains at Paragraphs 14-23.

For example, in 2009, Maine Energy and PERC were the only WTE Incinerators that reported MSW bypass deliveries to JRL. Maine Energy reported 3,018 tons and PERC 1,219 tons, totaling 4,237 tons of MSW bypass delivered to JRL. In contrast, JRL reported a total of 21,559 tons of MSW bypass in its 2009 Annual Report to DEP. NEWSME's 2009 Monthly

<sup>1</sup> Four days was selected since it conservatively represents more than 50% of a calendar week.

<sup>2</sup> This includes the delivery of MSW "bypass" from transfer stations for use as soft layer in Cell #6. Those deliveries began one day after the Order was filed with the BEP on September 13, 2010

Reports to DEP total 21,548 tons and are close (11 tons less) to the amounts reported in JRL's 2009 Annual Report. The Monthly Reports state that 16,769 tons of MSW bypass was received by JRL from Casella's West Bath and Waterville transfer stations, 3,018 tons from Maine Energy, 1,138 tons received by JRL from PERC, and 623 tons received by JRL from an independent transfer station operated by Troiano. In summary, for 2009, the amount reported by JRL or MSW bypass is 17,322 tons more than the total reported by all of the WTE Incinerators as directed to JRL, and is therefore "unallocated" and was sent without "verifiable authorization" in violation of Conditions 16(A) and (B) of the License Amendment.

Contrary to License Amendment requirement 16(D), JRL received consecutive daily shipments of MSW to JRL from Casella-owned transfer stations for periods exceeding one week on several occasions without providing appropriate notice to the Department. In fact, there were four periods of continuous MSW deliveries between 2008-2010 from the Casella transfer stations and/or Maine Energy to JRL that lasted for 7 days or more. See Affidavit of Mr. Mains at Paragraph 22-24. Pursuant to Condition 16(D) of the License Amendment, these events should have triggered bypass letters being sent to the Department providing them notice of these occurrences. Those notices were never sent.

**II. The Licensee Obtained the License by Misrepresenting or Failing to Disclose Fully all Relevant Facts (06-096 CMR 2 § 27(B)).**

On September 10, 2010, SPO obtained a Minor Revision to License #S-020700-WD-W-M. SPO obtained the License Minor Revision by misrepresenting or failing to disclose fully all relevant facts. DEP approved the Minor Revision and justified lifting of the 310,000 ton cap on MSW going to JRL, in part, because it thought that "landfill cells are constructed during the summer construction season, which is also the period when Maine incinerators receive the most

MSW. Therefore, the incinerators typically do not plan maintenance shutdowns during the summer or fall months.” Minor Revision at 6.

SPO did not disclose to the Department the fact that MSW was sent to JRL on a regular and continuous basis, even in the summer months when there is no planned shutdown. As shown in Attachments A, B, C, and E, plus Attachment D’s illustrative calendar to Mr. Main’s Affidavit, MSW bypass was delivered from Casella’s transfer stations and/or directly from Maine Energy to JRL virtually every month of the year between 2008 and 2010, including summer months. See Affidavit of Mr. Mains at Para. 29-31.

SPO did not disclose to the Department that, as explained above, a significant portion of the MSW already sent to JRL was done so without “verifiable authorization” in violation of Condition 16(A) and (B) of the License Amendment. Further, SPO did not disclose to the Department that there were four periods of continuous MSW deliveries between 2008-2010 from the Casella transfer stations and/or Maine Energy to JRL that lasted for 7 days or more, and no notice was sent to the Department in violation of Condition 16(D) of the License Amendment.

### **III. The Licensed Activity Poses a Threat to Human Health or the Environment (06-096 CMR 2 § 27(C)).**

The Minor Revision, issued on September 10, 2010, allows the use of unprocessed MSW to be used as the sole material for the soft layer at JRL. The unprocessed MSW is unproven as the sole material for the soft layer. See Affidavit of Dennis St. Peter Attached as Exhibit 4. As Mr. St. Peter, President of CES, Inc., states in his Affidavit, typically a 12-inch thick layer of tire chips or wood/bark chips has been used for this layer as these materials provide a consistent, predictable material with known frost protection, erosion control, and puncture resistance properties. See Affidavit of Dennis St. Peter at Paragraph 11. In fact, after 20 years of

experience in the field, Mr. St. Peter is not aware of another landfill in the state where *only* MSW is used as the select layer material.

There are serious concerns about using MSW as the sole material for the soft layer. Unprocessed MSW has the potential to cause the puncture or other damage to the underlying liner and liner/leachate collection system ("LCS"). *See* Affidavit of Dennis St. Peter at Paragraph 14.<sup>3</sup> There are also concerns that unprocessed MSW as select layer may not provide the necessary frost protection characteristics (or "R value") that is required under DEP regulations. *Id.* Therefore, using unprocessed MSW which may cause damage to the liner and LCS as the sole material for the soft layer poses a threat to human health and the environment.

**IV. There Has Been a Change in a Condition or Circumstance That Requires A Modification of the Terms of the License (06-096 CMR 2 § 27(D)).**

The Minor Revision states that it was issued because MSW is the "best" material for the soft layer and that there were problems with the use of front-end process residue ("FEPR") and other materials because they may cause problems with the leachate collection system. *See* Minor Revision at 6. However, at the March 3, 2011, Board meeting regarding PERC's and MRC's Appeal of the Minor Revision, the Department stated that it was not, in fact, approving the Minor Revision on the basis that MSW is needed for the soft layer because it is the best material for the soft layer. Rather, at that Board meeting Paula Clark stated:

First of all, I think it's very important to keep in mind that the Minor Revision license that is the subject of our conversation this morning is really focused on an increase in the 310,000 tons at Maine Energy. That license does not explore nor evaluate the merits of using MSW as a soft layer as landfill. That's something that we don't approve in this particular way.

*See* Audio of BEP Consideration of PERC/MRC Appeal of Minor Permit Revision at Track 6.

Instead, the Department stated that the Minor Revision was issued based upon the need to

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<sup>3</sup> Neither PERC nor MRC are aware of a Construction Quality Assurance Plan or Operations Manual for JRL that addresses selection of type and placement of MSW for the soft layer.

increase the 310,000 ton limit due to the fact that Maine Energy had become more efficient. The Department's change in position requires a modification of the Minor Revision to more accurately reflect its factual findings.

Furthermore, information is now available showing that any observed problem regarding FEPR and other materials is likely isolated to relatively small landfill sump collection areas and are due to the clogging of geotextiles, and is not associated with the characteristic of the FEPR. For example, Mr. St. Peter's Affidavit discusses a private study completed by Sevee Mahier for ecomaine entitled "Clogging Investigation Report Sump Area – Phase I Landfill Expansion Leachate Collection System" ("ecomaine Study"). See Mr. St. Peter's Affidavit at Paragraph 29.

The ecomaine Study found that leachate clogging issues at Pine Tree Landfill were isolated to the sump pump area and were due to the use of geotextiles. Therefore, based upon the ecomaine Study, any potential problems with the use of FEPR for the soft layer appear to be isolated to sump areas and involve the use of certain geotextiles. Mr. St. Peter also summarizes the findings of an EPA study that further supports this conclusion. See Mr. St. Peter's Affidavit at Paragraph 30 and Attachment B thereto.

**A Hearing Should Be Granted Because There Is  
Credible Conflicting Evidence and The Board Would Benefit from a Hearing**

The Board should grant a hearing on PERC's and MRC's Petition. As discussed above, there is credible conflicting evidence that: (1) the licensee has violated a condition of the license (06-096 CMR 2 § 27(A)); (2) the licensee obtained the license by misrepresenting or failing to disclose fully all relevant facts (06-096 CMR 2 § 27(B)); (3) the licensed activity poses a threat to human health or the environment; (06-096 CMR 2 § 27(C)); and/or (4) there has been a change in a condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license (06-096 CMR 2 § 27(D)).


To prove the claims in this Petition, at a hearing PERC and MRC would put on testimony from Mr. Mains, Mr. St. Peter, Mr. Prata (PERC Plant Manager), Mr. Louder (Executive Director of MRC), officials from the Department, and SPO, and representatives from Casella/NEWSME. The Board would benefit from such testimony as it will be able to hear direct testimony, cross examination, and have the ability to ask questions directly of the witnesses on all of the issues identified in this Petition to Modify.

### CONCLUSION

In conclusion, pursuant to 06-096 CMR 2 § 27, the Board should grant PERC and MRC a hearing on their Petition and modify the License including the License Amendments and Minor Revision according to the Proposed Modifications of the License Minor Amendment attached hereto as Exhibit 1.

DATED: May 27, 2011.

Respectfully submitted,



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